

PT 02-43

Tax Type: Property Tax

Issue: Educational Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

PEORIA SCHOOL DISTRICT #150)		
Applicant)	Docket #	01-72-41
v.)		
)	A.H. Docket #	01-PT-0062
)	P. I. #	Part of 14-17-251-006
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Dexter Gruber of Kavanagh, Scully, Sudow, White and Fredrick for Peoria School District #150; Mr. George Logan, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held to determine whether part of Peoria County Parcel Index No. 14-17-251-006 qualified for exemption during the 2001 assessment year.

The issue in this matter is whether the ownership by applicant of an undivided two-thirds (2/3) interest in Parcel Index No. 14-17-251-006 qualifies for a property tax exemption for any portion of the 2001 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested partial exemption be granted for a portion of the 2001 assessment year. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 **ILCS** 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that part of Peoria County Parcel Index No. 14-17-251-006 did not qualify for a property tax exemption for the 2001 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 9)

2. On July 16, 2001, the Department received the request for exemption of part of Peoria County Parcel Index No. 14-17-251-006. On October 4, 2001, the Department denied the requested exemption finding that the property was not in exempt ownership. On October 18, 2001, the applicant timely protested the denial and requested a hearing. The hearing on February 28, 2002 was held pursuant to that request. (Dept. Ex. No. 1)

3. The applicant acquired an undivided two-thirds (2/3) interest in Parcel Index No. 14-17-251-006 by a warranty deed dated March 13, 2001. (Dept. Ex. No. 1)

4. The property is vacant land that is not leased or rented by the applicant. It is located across the street from a high school. (Dept. Ex. No. 1; Applicant's Ex. No. 2)

5. The basis of the denial by the Department is that the applicant does not own the entire property. (Dept. Ex. No. 1; Tr. p. 10)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992).

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-135, which states:

§ 15-135. School districts and community college districts. All property of public school districts or public community college districts not leased by those districts or otherwise used with a view to profit is exempt.

An additional exemption for school districts is found at 35 **ILCS** 200/15-35, which states:

§ 15-35. Schools. All property donated by the United States for school purposes, and all property of schools not sold or leased or otherwise used with a view to profit, is exempt, Also exempt is: . . . (e) property owned by a school district.”

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Applicant acquired a portion of the real property at issue by a warranty deed dated March 13, 2001. Applicant avers that it is entitled to a property tax exemption for its undivided two-thirds (2/3) interest in Parcel Index No. 14-17-251-006. The Department asserts that applicant must own the entire property to be entitled to the exemption.

In Chicago Patrolmen’s Ass’n v. Department of Revenue, 171 Ill.2d 263 (1996), the Illinois Supreme Court decided that a charitable organization that owned an undivided 50% interest in property qualified for a property tax exemption for that 50% interest. The American Police Center and Museum has an undivided 50% interest in property co-owned by a non-exempt organization, the Chicago Patrolmen’s Association. The museum uses virtually all of the property for its charitable purposes. The museum pays for approximately

90% of the operating and upkeep expenses and pays the entire mortgage on the property. The association and museum jointly secured and guaranteed a bank loan for \$100,000 around the time that the property was purchased. The court found that the association and museum were equal co-owners of the property. The court stated that the determinative issue in the case is whether the property is owned by a charitable organization, (*id.* at 270) and whether property is entitled to an exemption under section 19.7¹ where two organizations each own an undivided 50% interest in the property and only one is a charitable organization. (*Id.* at 278) Even though the charitable property tax exemption requires both charitable ownership and charitable use, the court in granting the exemption, focused on the percentage of ownership by the charitable organization. The court stated:

We have already determined that, under the realistic approach to ownership, the Museum is the owner of an undivided 50% interest in the property. With the exception of ownership, the Department concedes that the property meets all the requirements for a section 19.7 exemption. Under these facts, we hold that the property at issue is entitled to an exemption in an amount equal to the actual percentage of the property owned by the Museum, which is 50%. This holding is consistent with the policy objective behind the charitable tax exemption, which is to encourage charitable activity. See *Christian Action Ministry*, 74 Ill.2d at 62. This holding is also consistent with section 19.7's requirement of ownership by a charitable organization. Although the exact issue now before us has never been addressed, there are cases supporting the grant of a partial exemption. *Id.* at 279.

The relevant test for exemption of the property at issue is ownership. The Department argues that the applicant must own the entire property in order to qualify for the exemption. However, it is clear from the language in Chicago Patrolmen's Ass'n that a partial or separate exemption can be granted based upon ownership. The applicant owns an undivided 2/3 interest in the property.

Accordingly, applicant is entitled to a property tax exemption for that 2/3 interest. As the applicant acquired the ownership interest on March 13, 2001, the applicant is only entitled to the

¹ The charitable property tax exemption currently found at 35 ILCS 200/15-65.

exemption for the period of March 13, 2001 through December 31, 2001, or for 81% of the 2001 assessment year.

It is therefore recommended that 2/3 of Peoria County Parcel Index No. 14-17-251-006 be exempt from property taxation for 81% of the 2001 assessment year.

Respectfully Submitted,

Date: July 8, 2002

Barbara S. Rowe
Administrative Law Judge